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In case no. 2752-23, the **Swedish Police Authority** (Appellant) v. the **Swedish Competition Authority** (Respondent), the Supreme Administrative Court delivered the following judgment on 21 January 2026.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court rejects the claim to obtain a preliminary ruling from the European Court of Justice concerning the meaning within the Union law procurement regime of a *substantial modification of an agreement*.

The Supreme Administrative Court overturns the rulings of the lower courts and remands the case to the administrative court for new examination in accordance with what is stated in paragraph 51.

BACKGROUND

1. The main rule in the procurement law regime is that an agreement entered into by an authority may not be modified unless the authority first carries out a new procurement procedure.
2. However, no new procurement procedure need be carried out where the modification is not substantial. A modification may be deemed to be substantial, among other things, where new conditions are introduced which, had they been included in the original procurement would have resulted in other tenders being included in the evaluation or additional suppliers participating in the procurement.
3. Irrespective of whether or not a substantial modification of an agreement is involved, no new procurement procedure is necessary where a modification is of lesser value. However, the modification may not entail an overall alteration of the nature of the previously procured agreement. Where the overall nature is altered, a new procurement procedure is necessary even if the modification is of lesser value. The modification is of lesser value where the increase or reduction of the value of the existing agreement is lower than a certain percent

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of the existing total value of the agreement or the threshold stated in the procurement regime.

4. The Swedish Police Authority carried out a procurement of a framework agreement for vehicle towing services in 2020 and beginning of 2021. The tender evaluation was conducted on the basis of the criterion of the lowest price offered. The participants would offer fixed prices for services with pickup and return within a radius of 10 kilometres. For greater distances, a kilometre price was to be stated for the remaining part of the distance. The price items were weighted and aggregated into a common evaluation price for each of the contract areas in the procurement. According to the procurement documents, the prices were to apply unchanged throughout the duration of the contract.
5. The procurement was concluded with the Swedish Police Authority entering into framework agreements with two suppliers, Lidköpings Biltjänst Hyr AB (“Biltjänst”) and Assistancekåren Sweden AB (“Assistancekåren”).
6. In the summer of 2021, the Swedish Police Authority agreed with the suppliers to amend the terms of remuneration in the framework agreements such that the radius within which the fixed price was to apply was increased to 50 kilometres. At the same time, the fixed prices per service were raised substantially while the kilometre prices were adjusted downward. The background of the modifications was, according to the Swedish Police Authority, that there was a need to even out the internal distribution of costs between different police areas of varying geographic size and development.
7. The Swedish Competition Authority applied to the Administrative Court in Stockholm to compel the Swedish Police Authority to pay a procurement fine. According to the Swedish Competition Authority, the modified agreements constituted unlawful direct awards of contract since the agreements were to have been preceded by a new procurement procedure.
8. The Swedish Police Authority was of the opinion that the application was to be rejected and claimed that the authority had no obligation to conduct a new

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procurement procedure since the modifications of the agreements could not be deemed to be substantial.

9. Regarding the amendment agreement with Biltjänst, the Swedish Police authority asserted, furthermore, that the agreement could be entered into without any new procurement also on the basis that the modifications were of lesser value. The authority referred to the invoicing and stated that it was apparent therefrom that the contract value had not been changed more than marginally.
10. The administrative court granted the application of the Swedish Competition Authority and decided that the Swedish Police Authority would pay SEK 1,200,000 as a procurement fine. According to the administrative court, it appeared probable that the modifications of the conditions, had they been included in the original procurement, could have resulted in the participation of additional suppliers in the procurement or that the outcome of the evaluation could have been different. Against this background, the court found that the modifications were to be regarded as substantial. For the same reasons, the court found that the modifications of the framework agreement with Biltjänst led to an alteration in the overall nature of the agreement and that the modifications, irrespective of the value of them, were accordingly unlawful. Thus, according to the court, it involved unlawful direct awards of contract.
11. The Swedish Police Authority appealed to the Administrative Court of Appeal in Stockholm which rejected the appeal.
12. As regards the question whether the modifications were to be regarded as substantial, the administrative court of appeal found no cause to make any determination other than that of the administrative court.
13. Also as regards the question whether the modifications to the framework agreement with Biltjänst gave rise to an alteration in the overall nature of the framework agreement, the administrative court of appeal shared the position of the administrative court. In such context, the administrative court of appeal stated the following. It cannot be excluded that the modifications to the terms

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of remuneration may entail an alteration in the overall nature of the agreement. In each individual case, a determination must be made whether a modification of the terms of remuneration constitutes an overly dramatic modification of the obligations of the parties and gives rise to the assumption that the result of the previous procurement would have been affected in some relevant way. In the current case, it could be assumed that the result of the original procurement could have been affected had the modified terms of remuneration been included from the outset.

CLAIMS, ETC.

14. *The Swedish Police Authority* claims that the rulings of the lower courts are to be overturned and that the application of the Swedish Competition Authority is to be rejected. In the alternative, the Swedish Police Authority claims that the amount of the procurement fine is to be set at a considerably lower amount. The authority also claims that the Supreme Administrative Court is to obtain a preliminary ruling from the European Court of Justice concerning what is meant by a substantial change of an agreement.
15. The Swedish Competition Authority is of the opinion that the appeal is to be rejected.

REASONS FOR THE RULING

The question in the Supreme Administrative Court

16. The question is whether certain modifications in existing framework agreements constitute unlawful direct awards of contract.

Legislation, etc.

17. Pursuant to Chapter 17, section 8 of the Public Procurement Act (2016:1145), a contract or framework agreement may be modified without a new procurement, if the modification is made on the basis of the provisions in sections 9–14.

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18. Section 9, first paragraph provides that a contract or a framework agreement may be modified without a new procurement, if the overall nature of the contract or framework agreement is not altered and the increase or decrease in the value of the contract or framework agreement is less than the threshold given and, in the case of a procurement of supplies or services, 10 per cent of the value of the contract or framework agreement.
19. Section 14, first paragraph states that a contract or framework agreement may be modified without a new procurement despite the modification not being encompassed by the provisions in sections 9–13, if the modification is not substantial. Sub-section 1 of the second paragraph states that a modification shall be seen as substantial, *inter alia*, where it introduces new conditions which, had they been part of the original procurement, would have led to other candidates being invited to tender, that other tenders would have been included in the evaluation or that additional suppliers would have participated in the procurement.
20. The provisions have their counterparts in Article 72 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Procurement Directive).
21. According to Article 72(1), contracts and framework agreements may be modified without a new procurement procedure in a number of situations. One of these is where the modifications, irrespective of their value, are not substantial within the meaning of Article 72(4). It states therein (point (a)) that a modification, in any event, shall be considered to be substantial where the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure.
22. Article 72(2) states that a contract, furthermore, may be modified without any need to verify whether the conditions set out in point (a) of Article 72(4) are met, without a new procurement procedure, where the value of the

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modification is below both the threshold and, for service and supply contracts, 10 per cent of the initial contract value. It is stated, however, that the modification may not alter the overall nature of the contract or framework agreement.

23. Article 72(5) provides that a new procurement procedure in accordance with the directive shall be required for other modifications of the provisions of a public contract or a framework agreement during its term than those provided for in Article 72(1) and Article 72(2).

Advance ruling from the European Court of Justice

24. The Supreme Administrative Court has obtained a preliminary ruling from the European Court of Justice for the purpose of clarifying the specific conditions according to which such a modification in a previously procured framework agreement which, in terms of its value, could be covered by Article 72(2) of the Procurement Directive nonetheless is to be deemed to give rise to an obligation to conduct a new procurement procedure on the basis of the fact that the overall nature of the framework agreement has been altered.
25. The request for a preliminary ruling referred the following question. Can a modification of the remuneration model in a framework agreement originally awarded on the basis of the award criterion of the lowest price offered, whereby the balance between fixed and variable prices is altered and the price levels are adjusted to such an extent that the total contract value does not change to more than a marginal degree, mean that the overall nature of the framework agreement is to be considered to have been altered within the meaning of Article 72(2) of the Procurement Directive?
26. The European Court of Justice answered the question by virtue of the judgment in case C-282/24 (EU:C:2025:790).
27. In the judgment, the European Court of Justice states that the concept of an alteration of the overall nature of a framework agreement is distinct from that of a substantial modification thereto and that the former concept covers only the most significant substantial modifications which entail a fundamental

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change in the subject matter of the framework agreement or in the type of framework agreement concerned or a fundamental change in its balance, with the result that they may be regarded as being of such a kind that they result in the transformation of the framework agreement in its entirety (paragraph 41).

28. It follows from the aforementioned, according to the European Court of Justice, that the mere fact that a modification would have been capable of influencing the outcome of the initial procurement procedure for the award of the framework agreement concerned, if it had been included in the documents which governed that procedure cannot, in itself, suffice to establish that that modification alters the overall nature of that framework agreement (para. 42).
29. According to the European Court of Justice, a modification of the method of remuneration of a framework agreement resulting in a marginal change in the total value of that framework agreement cannot, in any event, entail a fundamental change in the subject matter of that framework agreement or in the type of framework agreement concerned (para. 46).
30. However, it cannot be entirely ruled out, according to the European Court of Justice, that, in exceptional circumstances, such a modification may lead to a fundamental change in the balance of that framework agreement and therefore to an alteration of the overall nature of that framework agreement (para. 47).
31. According to the European Court of Justice, that would be the case if the revision of the method of remuneration alters the general structure of that framework agreement leading to the successful tenderer or tenderers being placed in a significantly more favourable position than that which would have resulted from the application of the method of remuneration initially agreed on (para. 48).
32. The European Court of Justice answered the question referred by the Supreme Administrative Court in the following manner. Article 72(2) of the Procurement Directive is to be interpreted as meaning that the modification of the method of remuneration provided for in a framework agreement which was awarded on the basis of the criterion of the lowest price, whereby the balance

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between fixed and variable prices is altered and the price levels are adjusted in such a manner that the total contract value does not change to more than a marginal degree, must not be regarded as altering the overall nature of that framework agreement, within the meaning of that provision, unless the modification of the method of remuneration of that framework agreement leads to a fundamental change in the balance of the agreement.

The Court's assessment

Are the modifications to be regarded as substantial?

33. The Swedish Police Authority has claimed that the Supreme Administrative Court shall obtain a preliminary ruling from the European Court of Justice regarding the concept of a substantial modification of an agreement. The Supreme Administrative Court finds that the correct interpretation of the relevant Union law regime is so evident that there is no room for any reasonable doubt. Accordingly, the claim shall be rejected.
34. The Supreme Administrative Court shares the assessment of the lower courts that it appears probable that the modifications of the terms of remuneration, had they been included in the original procurement, could have led to the participation of other suppliers in the procurement or that the outcome of the evaluation would have been different. Accordingly, as found by the lower courts, the modifications are to be regarded as substantial.
35. The exception in Chapter 17, section 14 of the Public Procurement Act is thus not applicable. Consequently, the Swedish Police Authority has not been entitled to enter into the amendment agreements with Biltjänst or Assistancekåren by reference to the notion that the modifications are not to be regarded as substantial.

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Is it a matter involving an alteration of the overall nature of the framework agreement?

36. Regarding the amendment agreement with Biltjänst, the Swedish Police Authority, over and above the assertion that the modifications are not to be regarded as substantial, has claimed that the agreement involves modifications of lesser value and that the agreement is therefore covered by the exception in Chapter 17, section 9 of the Public Procurement Act.
37. A condition for the exception in section 9 to apply is that the overall nature of the framework agreement is not altered.
38. The lower courts have made the assessment that it could be assumed that the result of the original procurement would have been affected had the modified terms of remuneration been present from the outset and that the overall nature of the framework agreement was thus altered.
39. By virtue of the judgment of the European Court of Justice, it is now clear that the circumstance that a modification introduces conditions which, in a hypothetical situation, would have affected the result of the original procurement is per se insufficient in order for the overall nature of the framework agreement to have been thereby altered (see para. 28 above).
40. Decisive to the assessment of whether the overall nature has been altered is, instead, as regards modifications of the method of remuneration, whether the new conditions have led to a fundamental change in the balance of the framework agreement (see para. 30 above). This is the case if the revision of the method of remuneration alters the general structure of the framework agreement leading to the supplier being placed in a significantly more favourable position than that which would have resulted from the application of the method of remuneration initially agreed on (see para. 31 above).
41. The background of the modification of the conditions relevant in the case is that the method of remuneration originally agreed upon caused the Swedish Police Authority's costs to concentrate in police areas with longer distances between the densely populated areas. The Swedish Police Authority took the

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initiative to re-negotiate, and the goal was that additional vehicle towing services would be remunerated subject to a fixed price with the aim of evening out the distribution of costs between the various police areas.

42. There is nothing to suggest that the agreed price adjustments had any purpose other than to compensate the supplier because the supplier agreed to a greater extent to accept remuneration based on a fixed price. The adduced data regarding the actual invoicing also shows that the modified conditions have not caused the Swedish Police Authority to pay higher total remuneration than would have been necessary in conjunction with an application of the original method of remuneration, at least not during that part of the contractual term to which the data pertains.
43. On the other hand, the Swedish Competition Authority has asserted that the supplier has been placed in a significantly more favourable position by being offered, relative to other tenderers, a unique possibility to renegotiate the terms of remuneration and increase their fixed revenues.
44. The Supreme Administrative Court notes that the comparison to be conducted in this context according to the European Court of Justice has in view the balance between the contracting parties prior to and following the modification of the condition itself. The fact that a modification leads to the supplier having an advantage in relation to other tenderers in the original procurement is thus not relevant to the assessment of whether the overall nature has been altered.
45. As regards the altered condition between fixed and variable income, the Supreme Administrative Court notes that a modification which entails the shift in the allocation of risk in favour of the supplier would certainly, depending on the circumstances, be able to alter the balance between the parties to a framework agreement. However, in order for that conclusion to be drawn in a specific case, it is insufficient to refer – as the Swedish Competition Authority does – to the fact that the supplier, by virtue of the modification, has been entitled to a greater extent to revenues calculated by means of a fixed price. The notion that more emphasis on fixed-price trips may conceivably trigger

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other considerations from a risk perspective is not the same as the modification unilaterally benefiting the supplier.

46. Against this background, the investigation does not support the assertion that the alteration of the method of remuneration in the framework agreement with Biltjänst has given rise to a fundamental change in the balance of the framework agreement. Accordingly, the overall nature of the framework agreement has not been altered.

The continued administration of the application regarding the procurement fine

47. Since the modifications of the agreements, both in the amendment agreement with Biltjänst and in the amendment agreement with Assistancekåren, are to be regarded as substantial, the Swedish Police Authority has not had the support of Chapter 17, section 14 of the Public Procurement Act to execute the agreements without conducting a new procurement procedure. As regards the amendment agreement with Assistancekåren, no other basis has been asserted according to which this agreement would be excepted from the requirement of a new procurement.
48. As regards the amendment agreement with Biltjänst, the Swedish Police Authority has, however, also asserted that the agreement pertains to modifications of lesser value which, pursuant to Chapter 17, section 9, in respect of which it is possible to agree without conducting a new procurement procedure. The lower courts have made the assessment that the exception, irrespective of the value of the modifications, is not applicable since the amendment agreement has led to an alteration of the overall nature of the framework agreement.
49. However, the Supreme Administrative Court has found that the amendment agreement has not altered the overall nature of the framework agreement. Accordingly, the question arises as to whether the value of the modifications has been sufficiently low in order for the exception in Chapter 17, section 9 to be applicable. The lower courts have not addressed this question.

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50. Since the question should not be examined by the Supreme Administrative Court as the court of first instance, and since there must be a position on which to proceed before the question regarding any procurement fine can be decided, the rulings of the lower courts are overturned and the case is remanded to the administrative court.
51. The examination in the administrative court shall be conducted on the basis of the notion that the modifications of the terms of remuneration in both framework agreements are to be regarded as substantial and that the modification of the terms of remuneration in the framework agreement with Biltjänst does not entail an alteration of the overall nature of the framework agreement.

Justices Kristina Ståhl, Per Classon, Ulrik von Essen, Magnus Medin and Martin Nilsson have participated in the ruling.

Judge Referee: Veronica Montell.